

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ORVILLE E. ANDERSON**  
Claimant

VS.

**LEARJET AIRCRAFT CORPORATION**  
Respondent  
Self-Insured

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Docket No. 190,739

**ORDER**

Claimant requests review of the Award entered by Administrative Law Judge Shannon S. Krysl dated August 23, 1995. The Appeals Board heard oral argument on January 23, 1996.

**APPEARANCES**

Claimant appeared by his attorney, Dale V. Slape of Wichita, Kansas. The respondent appeared by its attorney, Edward D. Heath, Jr., of Wichita, Kansas.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

**ISSUES**

The Administrative Law Judge denied claimant's request for benefits because the Judge found he failed to prove timely notice of accidental injury. Claimant requests the Appeals Board to review that finding. That is the sole issue on this review.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds:

The Award of the Administrative Law Judge should be affirmed.

Claimant has failed to prove by a preponderance of the credible evidence that notice was provided to the respondent of an accident arising out of and in the course of his employment for the period January 1994 through February 2, 1994, within either 10 days or 75 days as is required by K.S.A. 44-520.

Claimant worked for the respondent for many years and has suffered foot problems for many years. In 1974, claimant was forced to walk five miles in a snow storm causing immediate and severe foot pain. In 1986, claimant was diagnosed as having Morton's neuroma and surgery was suggested by Dr. Artz. In 1994, Dr. Toohey also diagnosed Morton's neuroma and, likewise, suggested surgery. The claimant had delayed undergoing surgery for his foot as he had earlier been informed by Dr. Toohey that the foot problems might be associated with a back problem. When back surgery did not resolve the problem, claimant underwent the foot surgery as was earlier recommended. Claimant terminated his employment with respondent on February 2, 1994.

On May 5, 1994, claimant was referred to Dr. Philip Mills for an independent medical examination in relation to his back. At that time, Dr. Mills opined that claimant's foot problems were work related, stemming from the constant activities of claimant walking on hard surfaces in the respondent's plant. Shortly thereafter, claimant provided notice and written claim to the respondent alleging bilateral foot problems arising out of and in the course of his employment through February 2, 1994, his date of termination.

K.S.A. 44-520 states:

"Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice."

The time limit between February 2, 1994, when claimant terminated his employment, and May 5, 1994, when he attended the independent medical examination with Dr. Mills, exceeds the 75-day statutory limit set in K.S.A. 44-520. Thus, the claimant must either show the respondent had actual knowledge of the accident, the employer was unavailable to receive such notice, or the employee was physically unable to give such notice. There is no evidence in the file to indicate the employer had actual knowledge of any accident to claimant's feet that related to claimant's employment. The employer, Learjet Aircraft Corporation, was, and continues to be, in existence and was available to receive notice to any of its authorized agents had claimant offered said notice. There was also no evidence presented to show claimant physically unable to give such notice. The Appeals Board thus finds that claimant has failed to prove by a preponderance of the credible evidence that notice of an injury from January 1994 through February 2, 1994, to claimant's feet and legs, was provided to the respondent as required by K.S.A. 44-520.

The findings and conclusions of the Administrative Law Judge are adopted by the Appeals Board as its own to the extent they are not inconsistent with the above.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Shannon S. Krysl dated August 23, 1995 should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Dale V. Slape, Wichita, KS  
Edward D. Heath, Jr., Wichita, KS  
Shannon S. Krysl, Administrative Law Judge  
Philip S. Harness, Director